IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: THE SELDON/BOYD CHILDREN.	:	APPEAL NOS. C-080242 C-080288
	:	C-080289
		TRIAL NO. F01-2858X
	:	
		JUDGMENT ENTRY.

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Appellant Shamekia Boyd is the mother of appellants Deasia Seldon, Raja Boyd, and Ramaya Boyd (collectively referred to as "the children"). She is also the mother of Tyonna Seldon, who is not a party to this appeal. The father of Deasia and Tyonna is Henry Jones. Mr. Jones is not a party to this appeal. The father of Ramaya and Raja is appellant Raj Boyd, who is married to Shamekia.

Deasia, Tyonna, and Raja were removed from the home of Mr. and Mrs. Boyd in October 2001, and they were placed in the temporary custody of appellee Hamilton County Department of Job and Family Services ("HCJFS"). Ramaya was placed in the temporary custody of HCJFS when she was born in March 2002. Mrs. Boyd had given birth to her while incarcerated.

On December 12, 2002, Deasia and Tyonna were adjudicated abused and dependent. On that same date, Raja and Ramaya were adjudicated dependent. Tyonna was placed in a planned permanent-living arrangement in January 2005. In May of that year, HCJFS sought permanent custody of the children. The magistrate assigned

[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

to the case considered the request for permanent custody, as well as the petition by the paternal grandmother, Ramona Matthews, for custody. After the hearing, the magistrate awarded custody of the children to Matthews.

The guardian ad litem and HCJFS objected to the decision of the magistrate. After a hearing, the trial court sustained the objections and awarded custody of the children to HCJFS. That decision was appealed to this court, which reversed the trial court's judgment because the transcript of the hearing before the magistrate was not in the record at the time the trial court issued its decision on the objections.[2] Without the transcript, the record did not demonstrate that "the trial court [had] completed an independent review of the record in sustaining the objections."[3]

On remand, the transcript was filed, and a new hearing was conducted. The trial court again sustained the objections of the guardian ad litem and HCJFS and again awarded permanent custody of the children to the state. Mr. and Mrs. Boyd and the children now appeal that judgment.

In related arguments, Mrs. Boyd, Mr. Boyd, and the children argue that the judgment of the trial court is not supported by the record. In her first assignment of error, Mrs. Boyd argues that the judgment was based upon insufficient evidence. In two assignments of error, Mr. Boyd argues that the award of permanent custody was against the weight of the evidence and that the finding that the award was in the best interest of the children was erroneous. In one assignment of error, the children argue

[2] *In re Seldon/Boyd Children*, 1st Dist. Nos. C-070440, C-070441, and C-070481, 2007-Ohio-5123.
[3] Id. at ¶13.

that the best-interest determination was supported by insufficient evidence and was against the weight of the evidence. We disagree.

To grant permanent custody of a child to the state, a court must conclude by clear and convincing evidence that (1) the children cannot or should not be returned to their parents in a reasonable time, and (2) an award of permanent custody is in the best interest of the child.[4] In this case, only the second determination is at issue.

Clear and convincing evidence is more than a mere preponderance of the evidence; it is evidence sufficient to cause the trier of fact to develop a firm belief or conviction as to the facts sought to be established.[5] But clear and convincing evidence is not the same as unequivocal evidence.[6] We will not reverse a trial court's determination unless we are convinced that it is not supported by sufficient evidence to meet the clear-and-convincing standard.[7]

When deciding the best interests of the children, the trial court must consider all the elements in R.C. 2151.414(D)(1) through (5) as well as other relevant factors:

"(1) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

"(2) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

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[4] R.C. 2151.141(B).
[5] See *Cross v. Ledford* (1954), 161 Ohio St. 469, 120 N.E.2d 118, paragraph three of the syllabus.
[6] *State v. Eppinger* (2001), 91 Ohio St.3d 158, 164, 743 N.E.2d 881, quoting *Cross*, 161 Ohio St. at 477, 120 N.E.2d 118.
[7] See *In re Wilkinson*, 1st Dist. Nos. C-040182, C-040203, and C-040282, 2004-Ohio-4107, at ¶30; citing *In re Leitch*, 3rd Dist. No. 13-01-11, 2001-Ohio-2306.

"(3) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period;

"(4) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency; and

"(5) Whether any of the factors in R.C. 2151.414(E)(7) to (11) apply in relation to the parents and child."

In its entry, the trial court considered each of the elements in R.C. 2151.414(D) and applied these elements to the facts in the case when it made its decision. The court found that the interaction and interrelationship of the children with their parents, siblings, relatives, foster parents, and out-of-home providers caused the children's best interest to be served by the termination of parental rights. The parents had failed "continuously and repeatedly" to remedy the conditions that had resulted in the children's removal from the home. They had continued to deny that physical abuse had occurred and had failed to address their addiction to drugs. They had failed to regularly support, visit, or communicate with the children when able to do so. They both had criminal histories. Mrs. Boyd was arrested for drug possession during the proceedings, and Mr. Boyd was actually incarcerated at the time of trial. The guardian ad litem's report recommended a permanent commitment to HCJFS. The children had been in the custody of HCJFS since

October 2001 in the cases of Deasia and Raja, and since March 2002 in the case of Ramya.

The thrust of the arguments to the contrary is that the trial court improperly weighed the statutory factors and that the weight given to them by the magistrate should be accepted by this court. The appellants argue that the bond between the mother and the children was strong and should have overriden other considerations. But the Ohio Supreme Court has made it clear that there is not one element that is to be given greater weight than the others under the statute.[8]

The appellants have essentially asked this court to reweigh the evidence concerning the various factors after the trial court has done its own weighing. It is not the duty of this court to reweigh the evidence.[9]

The trial court found by clear and convincing evidence that a grant of permanent custody to the agency was in the children's best interest. It meticulously followed the criteria set forth in R.C. 2151.414(D) when doing so. We have reviewed the record and have concluded that the court's decision was supported by evidence sufficient to meet the clear-and-convincing standard. We therefore reject the two assignments of error of Mr. Boyd, the sole assignment of error of the children, and the first assignment of error of Mrs. Boyd.

In her second assignment of error, Mrs. Boyd contends that the trial court should not have granted custody to HCJFS because placement with Matthews was a less restrictive alternative. A juvenile court is not required to consider placing

[8] *In re Schaeffer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, at ¶56.
[9] *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 461 N.E.2d 1273.

children with a relative prior to granting the permanent-custody request of an agency.[10] Accordingly, a juvenile court is not required to find by clear and convincing evidence that a relative is an unsuitable placement option prior to granting the permanent-custody request.[11] The juvenile court has discretion to determine what placement option is in the children's best interest.[12]

In this case, the trial court thoroughly considered Matthews's suitability and rejected her petition for custody. The court concluded that the following factors weighed against such an award: (1) Matthews had a history of involvement with HCJFS regarding her own children; (2) she had prior convictions for child endangering and drug trafficking; (3) her husband had prior criminal convictions, including one for operating a vehicle under the influence; (4) Matthews had not participated in regular visitation with the children during the proceedings; (5) the home study was significantly delayed because of a lack of cooperation by Matthews; (6) Matthews did not regularly participate in the proceedings below; and (7) she demonstrated little or no insight into either the issues that prevented Mr. and Mrs. Boyd from meeting the children's special needs or how the Boyds' conduct had placed the children at risk.

Mrs. Boyd does not contend that these findings were factually incorrect. She instead argues that the trial court improperly weighed them and that the magistrate's determination reflected a more appropriate analysis. As we have previously

[10] See *In re Schaeffer* at ¶¶56, 63; *In re Wilkenson* (Oct. 12, 2001), 1st Dist. Nos. C-010402 and C-010408.
[11] Id.
[12] *In re Needom*, 1st Dist. Nos. C-080107 and C-080121, 2008-Ohio-2196, at ¶14.

discussed, this is not a sufficient basis to reverse the trial court's judgment. Mrs. Boyd's second assignment of error is overruled.

For these reasons, the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., CUNNINGNAM and **DINKELACKER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on July 16, 2008

per order of the Court _____.

Presiding Judge